

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 THE STATE OF NEW YORK
4 BY ITS ATTORNEY GENERAL
5 ROBERT ABRAMS,

6 Plaintiff,

7 v.

93 Civ. 3868 (JES)

8 PRIMESTAR PARTNERS L.P., et al.,

9 Defendants.

10 New York, N. Y.
11 September 3, 1993

12 Before:

13 HON. JOHN E. SPRIZZO,

14 District Judge

15 APPEARANCES

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18 Attorney for Plaintiff

19 BY: JOSEPH OPPER

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Attorneys for amicus DirecTV, Inc.

BY: LAWRENCE R. SIDMAN

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CYNTHIA REED

United States Department of Justice - Civil Division
amicus, Federal Communications Commission

1 THE COURT: Six minutes each. I don't think you
2 need that much time, but go ahead. You heard the questions
3 I have asked. You might as well respond to them.

4 MR. SIDMAN: Very well, your Honor. My name is
5 Lawrence Sidman. We are representing DirecTV, a DBS
6 provider. To go directly to the questions that you raised
7 about the consideration of competition in the marketplace, I
8 would respectfully agree entirely with you. The issue is
9 whether the marketplace with these proposed decrees will be
10 less competitive than the marketplace pursuant to the Cable
11 Act. We would respectfully submit, and virtually all of the
12 competitors agree on this, with one singular exception, that
13 that marketplace will be less competitive and significantly
14 less competitive.

15 THE COURT: Why?

16 MR. SIDMAN: The reason, your Honor, is
17 because --

18 THE COURT: Exclusive contracts are not forbidden
19 now under the law.

20 MR. SIDMAN: Your Honor, there are several
21 categories under the Cable Act. One prohibits exclusive
22 contracts between vertically integrated cable programmers
23 and cable operators in rural areas. That is a per se rule.

24 THE COURT: But this decree doesn't permit that
25 either, as I read it.

1 MR. SIDMAN: Your Honor, this decree allows and
2 explicitly sanctions and sends a signal to the marketplace
3 that exclusive contracts between vertically integrated cable
4 programmers and a DBS operator, one DBS operator in each of
5 those slots --

6 THE COURT: Not vertically integrated. Maybe I
7 read the decree incorrectly, but in a situation where there
8 is an interest by the cable operator, this provision doesn't
9 apply.

10 MR. SIDMAN: Your Honor, this consent decree
11 permits --

12 THE COURT: Maybe I read it incorrectly.

13 MR. SIDMAN: I would respectfully request your
14 Honor to examine section IV(A)(1)(g).

15 THE COURT: First of all, the decree specifically
16 says to the extent that the FCC determines that the
17 exclusive contract is not legal, this decree does not
18 protect them. So that argument fails, because the language
19 of the decree itself makes it plain that where it would have
20 the effect of making it less competitive, the decree does
21 not protect them.

22 MR. SIDMAN: Your Honor, if I may speak precisely
23 to that, I think that the problem there is that by the time
24 that adjudication is made, the game is lost. We are moving
25 in an area of remarkably rapid technology. There should not

1 be an impediment to cable competitors that have to first
2 prove a proceeding before the FCC or a court.

3 THE COURT: It says here: "Only where the
4 following three conditions are met are the obligations of
5 paragraphs," etc., "not to apply as set forth above:

6 "(i) The Primestar Partner services shall not be
7 licensed on an exclusive basis to any high-power DBS
8 provider in which owners of cable systems accounting for
9 more than 20 percent of all cable subscribers control,
10 individually or collectively, such high-power DBS provider."
11 That is your vertical integration, right?

12 MR. SIDMAN: Your Honor, I would respectfully
13 request that you go back to the prior --

14 THE COURT: The second provision says that it
15 doesn't apply "when such exclusive has the effect of
16 precluding the availability of such programming in any other
17 orbital location."

18 Then it says: "The Primestar Partner services
19 shall not require as a condition of dealing that it be
20 licensed as exclusive distributor of the programming
21 services offered by such DBS provider." So they can't kick
22 you out if you take someone else's programming.

23 MR. SIDMAN: Your Honor, the fact is that that
24 section was designed specifically to validate exclusive
25 contracts between cable defendants, Time Warner and

1 Viacom --

2 THE COURT: Exclusive contracts are not forbidden
3 now except in those situations where the Cable Act forbids
4 them, and even then the FCC has the power to make a finding
5 of public interest which makes them legal, as I understand
6 the statutory scheme. Am I correct?

7 MR. SIDMAN: Your Honor, we would respectfully
8 submit, and we would be prepared to argue at the FCC, that
9 there are three independent grounds in the section, 628(b),
10 628(c)(2), the nonprice elimination, and the provision
11 dealing with exclusivity of rural areas, which would
12 invalidate and make unlawful --

13 THE COURT: But the decree doesn't foreclose your
14 right to go to the FCC and make those arguments. This
15 decree specifically provides that if you persuade the FCC,
16 they get no protection under the terms of this decree, as I
17 read it, so what are you complaining about?

18 MR. SIDMAN: Your Honor, we are very concerned
19 about the following situations. Number one, with the
20 presence of this decree, it sends a signal to the
21 marketplace that these kinds of contractual relationships
22 which we contend are unlawful are lawful until it is proven
23 otherwise.

24 THE COURT: But that is always true.

25 MR. SIDMAN: Your Honor --

1 THE COURT: You want me to send a signal to the
2 market that it is unlawful until proven lawful? Why should
3 I send out your signal any more than theirs, as long as we
4 are talking about communication?

5 MR. SIDMAN: Your Honor, we would not
6 respectfully --

7 THE COURT: You want a presumption of illegality
8 to attach to the exclusive contract, which Congress has not
9 done except with respect to certain types of vertically
10 integrated contracts. You want me to, in effect, amend the
11 Cable Act. I can't do that.

12 MR. SIDMAN: Your Honor, we are absolutely not
13 requesting that.

14 THE COURT: You want me to send the opposite
15 signal out to the market: that exclusive contracts are bad
16 unless the FCC says they are good, and that is not what the
17 statute says.

18 MR. SIDMAN: Your Honor, one of the most
19 hard-fought provisions of the Cable Act and one of the most
20 controverted issues dealt with the question of exclusivity.
21 We would be quite content if your Honor would send no signal
22 with regard to that. That is one of our primary --

23 THE COURT: This record is here. If I approve
24 this decree, I am indicating no opinion whatsoever in any
25 shape, manner or form with respect to whether exclusive

1 contracts do or do not conform with the Cable Act. All I am
2 saying to you is that if I approve this decree, it is on the
3 express understanding, as the decree itself says, that it is
4 all subject to what the FCC determines to be lawful or
5 unlawful with respect to exclusive contracts or any other
6 facet of this decree, as I understand it. There is nothing
7 in this decree that binds the FCC in any way or binds you in
8 any way, nor should any finding I make in approving this
9 decree be taken in any shape, manner or form as any
10 imprimatur of approval or any suggestion that the particular
11 exclusive contracts are lawful or unlawful. That is a
12 matter for the FCC and a matter as to which I would have to
13 defer to the FCC in any event were any litigation to
14 commence on that basis.

15 MR. SIDMAN: Your Honor, we appreciate that
16 statement, because one of the primary concerns we have, and
17 there is already evidence of it, is the use of this decree
18 to make an affirmative case that this Court, presumably, if
19 it approves it, and certainly the state AGs put their
20 imprimatur --

21 THE COURT: How can you make that argument in the
22 face of the language of this decree? How?

23 MR. SIDMAN: Your Honor --

24 THE COURT: If they do that, you can sue them for
25 securities fraud if they put that in there 13-D or whatever

1 prospectus they file with the SEC.

2 MR. SIDMAN: Your Honor, again, to go back to the
3 basic precept that you started this argument with, with
4 which we concurred -- more significantly, with which the FCC
5 concurred -- these decrees in almost every material aspect
6 end up resolving issues which the Cable Act has decided
7 contrary or created the situation which is less competitive.
8 If you look at the major points.

9 THE COURT: I don't think that is true. The way
10 it is right now, the consumers have none of the protections
11 which this decree is going to give them. As it is right
12 now, Warner or Primestar can say, we don't have to give you
13 anything. We can control our programming, we can limit it
14 to whom we like. Go to court and sue us. That is what you
15 have done. They could have litigated this case; they chose
16 not to. Do you really want me to send a signal out to the
17 marketplace that in refusing this decree I have made a
18 determination that exclusive contracts with orbital
19 providers are in effect presumptively unlawful? I don't
20 think I can make that finding any more than I can make the
21 other at this stage of the game. That is a matter for the
22 FCC to determine, as this decree provides.

23 MR. SIDMAN: Your Honor, let me make a suggestion
24 directly responsive to that point. We would be quite
25 content if one possibility in terms of disposition of this

1 matter is for the Court to retain jurisdiction pending an
2 FCC judgment on this issue in the cases pending before the
3 FCC.

4 THE COURT: I would have no basis to do that. I
5 have continuing jurisdiction under this decree anyway.

6 MR. SIDMAN: Correct.

7 THE COURT: But it seems to me that if and when
8 the exclusive contract is challenged at the FCC level, that
9 is a separate lawsuit with considerations of agency
10 deference, as I understand, under Chevron and whatnot, which
11 raise a host of different legal questions than those raised
12 by this decree. I even have a Tunney Act case pending
13 in front of me, which itself raises different legal
14 questions.

15 There are principles of federalism involved here.
16 You have a group of states that have decided to settle a
17 case that they have brought on a basis that they have found
18 satisfactory to themselves, and I don't think I have the
19 jurisdiction to interfere with that judgment unless I find
20 it expressly not to be in the public interest. If I were to
21 find it not to be in the public interest, it would have to
22 be on the theory that exclusive contracts with orbital
23 providers are under all circumstances unlawful, and that is
24 not what the statute says. Therefore, I don't think I could
25 make that determination without at least giving the FCC a

1 crack at it first. I wouldn't have subject matter
2 jurisdiction to do that, I don't think.

3 MR. SIDMAN: I think, your Honor, that is exactly
4 what I am suggesting, which is that this Court need not
5 enter the judgment until the question has been decided --

6 THE COURT: Why?

7 MR. SIDMAN: -- by the FCC.

8 THE COURT: Why?

9 MR. SIDMAN: Because, just as has already
10 occurred, even without the Court's entry of judgment, one of
11 the parties has gone to the FCC and waved this decree
12 around. We are very concerned that the entry of the decree
13 will be prejudicial. All we are asking for is no signal
14 from the Court with regard to --

15 THE COURT: If I refuse to sign the decree, it is
16 a signal that it is unlawful, basically; otherwise why
17 wouldn't I just go ahead and sign it?

18 MR. SIDMAN: Your Honor, essentially our basic
19 position is, we respectfully submit, that it should not be
20 signed because it will create a far less competitive
21 marketplace, and the FCC agrees with it.

22 THE COURT: That isn't true, because the way it
23 is now they are perfectly free to enter into exclusive
24 contracts with orbital providers and you have the right to
25 challenge that before the FCC. Under the law as it stands

1 now, they can do whatever they like. Under the law as it
2 stands now, they are not even limited with respect to
3 orbital providers. Obviously, the public has more
4 protection now than it had before; otherwise there is no
5 protection against what they are doing.

6 MR. SIDMAN: The public has the protection
7 afforded by the Cable Act.

8 THE COURT: Yes, but people have to implement
9 that by bringing an appropriate lawsuit or bringing an
10 appropriate FCC proceeding. Until they do that, as it
11 stands right now, Primestar and anybody else is perfectly
12 free to enter into any exclusive contract that does not
13 specifically violate the terms of the Cable Act. If they
14 were to enter into one that specifically violated the terms
15 of the Cable Act, they would be subject to a lawsuit. This
16 decree doesn't change any of that. You can still bring a
17 lawsuit.

18 MR. SIDMAN: Your Honor, again, the concern we
19 have -- and I won't repeat myself -- is, we focus on
20 exclusivity. There are issues of the pricing of these
21 contracts which is a whole other issue. The Cable Act
22 mandates --

23 THE COURT: But these are issues that have to be
24 determined by the FCC. The FCC has to determine whether or
25 not the pricing provisions of this decree violate the Cable

1 Act. I don't think that I have subject matter jurisdiction
2 to resolve that unless they go first to the Commission.

3 MR. SIDMAN: Your Honor, I think all we are
4 saying is, our concern is that entry of the final judgment
5 in this case will be prejudicial to the determinations at
6 the FCC.

7 THE COURT: You keep saying that, but you don't
8 persuade me because you haven't shown me any prejudice other
9 than people are going to misconstrue the decree. That is
10 not a reason not to sign it. By its terms it says that
11 which is unlawful under the FCC and the regulations of the
12 Cable Act are not protected by this decree. I am sending
13 out the opposite signal. I read your briefs, all hundred
14 pages of these briefs, in vain to find out what you were
15 complaining about. I could find nothing other than your
16 fear that it will be marketed adversely to you. The answer
17 to that in a free country is to market it the other way.
18 You have your First Amendment rights like everybody else.

19 MR. SIDMAN: Your Honor, our concern is that if
20 this decree is entered in this fashion, then the structure
21 of this marketplace will be shaped in such a fashion that it
22 will be markedly less competitive, with less competition for
23 consumers.

24 THE COURT: That just isn't so. With respect to
25 everybody else other than orbital providers, it is a lot

1 more competitive than it was before, and with respect to
2 orbital providers it doesn't do anything other than say they
3 can do it if the law permits it.

4 MR. SIDMAN: Your Honor, the other competitors,
5 you know, can speak and will --

6 THE COURT: I think they have the same problem,
7 because I didn't find their briefs any more persuasive than
8 yours, and the phone companies' I found least persuasive of
9 all because they are not even in the marketplace until Judge
10 Ellis's decision is affirmed by a higher court.

11 MR. SIDMAN: I would just close on one final
12 note, your Honor. All around the country, since the Cable
13 Act, the cable defendants have engaged in a very vigorous
14 attempt to undermine the Cable Act, challenge the
15 constitutionality, and undermine it every step of the way.
16 I would respectfully submit that your observation about the
17 motivation for the states' attorneys general is right on
18 point. If an optimally competitive marketplace were to be
19 created when the Cable Act was enacted, that should have
20 been the end of it. As the FCC, which is the agency of
21 primary jurisdiction, recognizes, that would have --

22 THE COURT: But you are saying the public is
23 worse off because they have agreed to 70 percent rather than
24 litigating 100 percent. It doesn't make any sense.

25 MR. SIDMAN: Your Honor, I am not saying that.

1 THE COURT: You are saying it is wasteful to
2 litigate the 30 percent but you want me to litigate the 100
3 percent.

4 MR. SIDMAN: No, I am not saying that, your
5 Honor. I am saying the very points that are being raised by
6 each of the amici in this case are points which swallow the
7 rule.

8 THE COURT: If I choose to approve this decree,
9 as I think I will, I am not suggesting in any shape, manner
10 or form that exclusive contracts with orbital providers or
11 the price determinations are lawful. I will say that for
12 the record, so that if they try to use it, you can say Judge
13 Sprizzo has said specifically that, in approving the decree,
14 he is adhering to principles of federalism and therefore
15 allowing the state attorneys general to decide what they
16 think to be appropriate, without unnecessary judicial
17 interference. I am not of the mind that the marketplace for
18 cable programming is made less competitive overall,
19 including orbital providers. I am going to approve this
20 decree. I see no reason why I should not. I think that all
21 of the issues you raised are issues that can be raised at an
22 appropriate time in other appropriate legal proceedings and
23 therefore resolved and under legal standards which might be
24 very different than those which I have to apply in approving
25 what amounts to a decree consented to by many states.

1 I have to be concerned about principles of
2 federalism. I have no right to interfere with the judgment
3 of the state attorneys general unless I think it is a
4 palpable disregard of the public interest. This decree does
5 seem to give more rights to the consumers than they had
6 before, although admittedly not all of the rights that they
7 could possibly get had the case gone to litigation. But
8 that is why cases settle in the first place. Nobody ever
9 gets a whole loaf in litigation settlement, otherwise the
10 case would never settle. The public has gotten a lot more
11 than they would have gotten had this case gone on for
12 another ten years and the attorneys general had lost the
13 case.

14 Now I will hear from the phone companies. You
15 have a very difficult question to deal with, which is that
16 you don't have any competitive standing in the marketplace
17 unless the decision of Judge Ellis is affirmed.

18 MR. KELLOGG: Michael Kellogg on behalf of the
19 telephone companies.

20 I want to take issue with your central premise,
21 which is that under the antitrust laws half a loaf is better
22 than none. These decrees do provide access for some of the
23 competitors of the cable industry but not for telephone
24 companies whatsoever.

25 THE COURT: But you had no right to be in the



NEWS RELEASE

DirecTV™ ADDS ENCORE AND ITS SIX THEMATIC MULTIPLEX SERVICES TO PROGRAMMING LINEUP

Los Angeles, CA December 8, 1993 – DirecTV, Inc., a unit of GM Hughes Electronics, and ENCORE Media Corp. announced today the signing of an agreement under which ENCORE and its six new Thematic Multiplex movie channels will be distributed through DirecTV™, the nation's premiere high-power direct broadcast satellite service. With DirecTV, viewers across the United States will have access to approximately 150 channels of entertainment programming through the low cost RCA-brand Digital Satellite System (DSS™) which features an 18-inch satellite dish.

ENCORE, an all-movie, commercial-free entertainment service offering hits of the 60s, 70s and 80s, currently has 4.3 million subscribers. ENCORE plans to launch six Thematic Multiplex channels in 1994. The new channels will offer "mood on demand" movie services – Love Stories, Western, Mystery, Tween's, Action, and True Stories & Drama.

"We're pleased to add the ENCORE services to our programming lineup," said Eddy Hartenstein, president, DirecTV. "We want to provide viewers with more choice and selection in entertainment programming, and we think our subscribers will enjoy ENCORE's creative concept of a seven-channel thematic service."

John J. Sie, chairman of ENCORE Media Corp., stated, "DirecTV is the first of the high-powered direct broadcast services, and we believe its near video-on-demand capability, coupled with ENCORE's dependable destination channels, will replicate a true home video store."

DirecTV will offer a broad array of monthly subscription and pay-per-view programming beginning in April 1994. To date, DirecTV has signed a total of 30 popular cable networks such as The Disney Channel and CNN, and 40 to 50 channels of movies through agreements with Paramount, Columbia/Tristar, Sony Pictures

MORE . . .

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2 2 2 2 2

DirecTV TO DISTRIBUTE ENCORE PROGRAMMING

Classics, Universal and Turner Broadcasting for classic movies from its MGM library. The pay-per-view offerings enable DirecTV to emulate a video store in both convenience and programming selection by offering a wide selection of films, with popular hits showing as often as every 30 minutes. DirecTV subscribers will select films on impulse from a user-friendly remote control either by title from the on-screen menu or from a preview channel showing trailers of the current films.

The home receiving system is being manufactured by Thomson Consumer Electronics and will be sold under the RCA brand name at consumer electronics and satellite retail outlets nationwide. DSS™ is a three-component satellite receiving system consisting of an 18-inch satellite antenna, a compact digital receiver and a remote control. Suggested retail price for DSS will be approximately \$700, installation not included.

DirecTV, Inc. is a unit of GM Hughes Electronics. GM Hughes Electronics is a subsidiary of General Motors. The earnings of GM Hughes Electronics Corporation are used to calculate the earnings per share of General Motors Class H Common Stock (NYSE:GMH).

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CABLE WORLD

Vol. 5 No. 39
October 4, 1993

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WASHINGTON, D.C. 20006

Subcommittee To Wait For FCC Rate Survey Before Changing Regs

BY VINCENTE PASDELOUP

They huffed and they puffed, but in the end, they decided to wait.

Members of the U.S. House of Representatives Telecommunications and Finance Subcommittee said last week they won't ask the FCC to impose new cable rate-regulation benchmarks until the commission analyzes its latest cable rate survey results.

The subcommittee's Sept. 28 hearing on cable rates was marked by congressional in-fighting. Republican members who initially opposed the 1992 Cable Act laid the blame for ris-

See Survey on page 16

Retrans: 11th Hour

BY MATT STUMP

With less than one week to go before retransmission consent's Oct. 6 deadline, large MSOs last week were wrapping up deals with broadcast networks eager to minimize the chance that their stations will go dark in major markets.

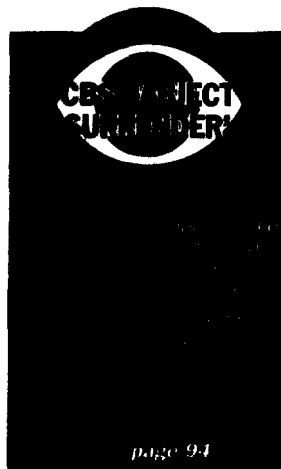
CBS bitterly abandoned hopes for any sort of retransmission windfall, scrapping plans for a new cable network by granting one-year carriage extensions for its owned-and-operated stations. And Tele-Communi-

cations Inc. signed a retransmission-consent deal with NBC for America's Talking. The nation's largest MSO also said it was close to cutting a deal with Capital Cities/ABC Inc. to carry ESPN2 in exchange for ABC signals.

NBC also signed deals with Cablevision Industries, TeleCable, Newhouse Broadcasting Co. and Colony Communications.

Cablevision Systems Corp. announced its first retransmission-consent deal — a deal with Cap Cities/ABC to carry ESPN2 — and hinted that

See Retrans on page 102



Viacom, Blockbuster Team Up To Bolster Bid for Paramount

BY K.C. NEEL

As the fight for Paramount Communications Inc. headed into its third week, Viacom Inc. teamed up with Blockbuster Entertainment Corp. and reportedly was wooing Cox Enterprises Inc. and as many as four telcos, including Southwestern Bell.

As one industry player said late last week, "(Viacom chairman) Sumner Redstone is certainly expanding his Christmas card list with all these possible investors. But he needs the money to continue playing in the game."

By taking on partners, Redstone,

See Viacom on page 101

Disney

All three parent companies battle for Paramount Communications Inc., Encore Media Corp. delivered a major blow to Showtime Networks Inc. last week by signing an exclusive film-licensing deal valued at \$1 billion with Walt Disney Studios.

In outbidding Showtime for the Disney films, Encore continued an acquisi-

See Encore on page 8

LINKING HEADENDS

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The Mid-America Cable Ass'n. eyes regional interconnect.

BT EYES VIDEO

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U.K. telco wins the OK to deliver video-on-demand.

A LOOK AT ADELPHIA

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U.S.'s 11th largest MSO faces some big decisions.

PRIMER ON PCS

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Not everyone agrees on what PCS is or where it's headed.

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Stock prices, for the most part, are on the rise.

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NEWS

Encore Snatches Walt Disney Titles from Showtime

Encore from page 1

tion binge that has included recent deals with Universal Pictures, Carolco Pictures, New Line Cinema and Fine Line Cinema, largely at Showtime's expense.

The agreement could devastate the exclusivity strategy Showtime has pursued since 1984, when it snatched rights to Paramount Pictures titles away from HBO for five years. Without Disney and Paramount, which returned to HBO in 1990, TriStar International will be the only major studio aligned with Showtime.

According to terms of the Disney agreement, Encore will carry up to 360 films from the studio's Touchstone, Hollywood and Miramax divisions. The mini-pay network will receive movies from the 10-year Miramax deal beginning in January.

Miramax movies will join films from Universal Pictures on Encore's new first-run pay network Starz!, set for a Jan. 1 launch.

Encore's Touchstone-Hollywood Pictures deal covers seven years beginning in January 1997. Showtime will continue to carry Touchstone and Hollywood Pictures movies until then, and Walt Disney Studios films will remain on The Disney Channel.

Encore's Disney deal gives it enough product for Starz! and its six mood-on-demand channels set to launch in July.

"Our key emphasis is on quality," said John Sie, Encore's chairman-CEO.

He added that Starz! won't carry what he called "urban, hard-edged" films or the B-movies that most other pay networks program.

"We think we can do better than the existing pay networks by using this approach and bring back former pay subscribers to the category," Sie said.

Starz! will be packaged with Encore at a suggested retail price of \$6 a month, he said, adding that the new network won't be available a la carte.

Encore is priced from \$1 to \$2.95.

The six mood-on-demand services — love stories, westerns, 'twens, mysteries, action/adventure and true stories — also will be packaged with Encore for \$6 a month. Encore will suggest marketing the entire eight-channel package for \$12.

Charges that Encore will compete unfairly on price with Showtime and The Movie Channel were part of a lawsuit Viacom Inc. chairman Sumner Redstone filed Sept. 23 against Encore parent Liberty Media Corp., as well as Tele-Communications Inc.

Last week, Sie dismissed the lawsuit as "frivolous."



He said Encore's networks will help operators recover revenue lost to rate regulation: "The question in the new age of cable is how much cash flow each channel is generating."

Tony Cox, Showtime's chairman, wasn't pleased.

"This is another clear manifestation of TCI's monopolistic practices to reshape the business," he said. "They (Encore) are grossly overpaying for product and forcing their way into the pay television business."

Showtime has deals with TriStar International, Castle Rock, Imagine and Polygram, and the network produces 15 to 20 new movies a year.

Even after January 1997, Showtime will carry some Touchstone and Hollywood Pictures movies because each film

has a 15- to 18-month pay window.

A Touchstone movie premiering on Showtime in December 1996 could run until mid-1988, Cox said.

"Our programming slate is solid," he said. "Clearly, TCI is out to hurt us, but we think we'll continue to be a player in the pay TV business."

Encore now schedules 50 to 60 monthly movies, but Starz! will carry more than 100 titles each month, according to Sie.

He said films will move from one network to the other, but no movie will appear on the same network in the same month.

Encore had lined up no launch commitments for Starz! or the mood-on-demand channels through late last week. But Sie said he expects strong support from TCI: "We hope it's more than 50 percent."

Encore planned to launch its mood-on-demand channels using DigiCipher 2, Sie said. But production delays will force Encore to launch Starz! and the other channels using DigiCipher 1. Starz! will be fed in the digital format to systems via Galaxy 1, transponder 13.

When the six mood-on-demand channels join Starz! and Encore in July, the eight channels will be compressed on two channels, Sie said.

A&E Sues Century Over a la Carte

BY MATT STUMP

In the first, but probably not the last, lawsuit of its kind, A&E sued Century Communications Corp. Sept. 23 for allegedly offering the network a la carte on its 200,000-subscriber system in Los Angeles.

The suit, filed in U.S. District Court for the District of Connecticut, seeks unspecified damages.

Separately, USA Network continued to wait for the U.S. District Court for the Middle District of Pennsylvania to schedule a hearing on its request for a permanent injunction against C-TEC Corp., which began to offer the network a la carte in August.

Adelphia Cable Communications Corp. is also at the center of the a la carte controversy, but no network had sued the MSO as of late last week.

Adelphia broke its cable satellite package into an a la carte tier Sept. 1 — a move that USA and ESPN objected to.

But network sources say the MSO is negotiating in good faith to resolve the dispute. "We're making favorable progress," an Adelphia spokesman said.

A&E alleged that Century assured the network in August that it wouldn't distribute A&E a la carte. But the MSO began to tell its 200,000 Los Angeles subscribers of impending service changes Aug. 25, A&E said.

No details

On Aug. 30 — one day before Century instituted an a la carte tier — the MSO told A&E that it would be in the tier, according to the network.

A&E also said Century never gave the network details about the new a la carte tier that's offering each network for 79 cents a month. The network said it wrote Century three times in September to tell it a la carte tiering violated its contract.

A Century spokesman declined to discuss the lawsuit.

Encore bows New Line deal

Four-year exclusive follows retro cabler's pact for current Uni films

By Robert Marich

Encore, the discount pay TV service noted for recycling older movies on pay TV, signed a four-year exclusive output deal Monday with New Line Cinema, which is Encore's second recent deal snaring current films.

New Line, the New York City-based movie company, expects the pay TV pact to generate at least \$150 million for 60 films. The deal covers theatrical releases beginning Jan. 1, after the expiration of New Line's current multiyear pay TV pact with Showtime.

Monday's contract continues a trend of competition for theatrical films warming up in the domestic pay TV arena, which had cooled in recent years after heated bidding wars in the late 1980s.

Encore, which is 90%-owned by cable TV network company Liberty Media Corp., recently locked up major studio films through a five-year pact with Universal Studios (HR 5/28).

The pay industry's two giants — HBO and Showtime — sharply curbed bidding wars in recent years when faced with a soft pay-

cable business that crimped profits. For instance, Universal did not have a formal pay output deal for several years, prior to its new Encore pact, in one example of softening demand at HBO and Showtime.

John Field, a Denver-based cable TV analyst with investment

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